

No. 1-13-0504

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 12665
)	
EPIFANIO PEREZ,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the denial of defendant's motion to withdraw his guilty plea, finding no ineffective assistance of counsel which would have rendered defendant's guilty plea unknowing or involuntary. We vacated defendant's electronic citation fee, where the parties agreed that defendant was not subject to the fee.

¶ 2 Defendant, Epifanio Perez, a Mexican national, pleaded guilty to aggravated criminal sexual abuse and was sentenced to three years in prison followed by a two-year term of mandatory supervised release (MSR). The trial court also imposed \$2,135 in various fines and fees. Defendant subsequently moved to withdraw his guilty plea, which the trial court denied. Defendant appeals the denial of his motion to withdraw his guilty plea, arguing that his trial counsel's ineffective assistance prevented him from making a knowing and voluntary plea. Defendant also argues that we should vacate the \$5 electronic citation fee assessed against him,

as such a fee may only be assessed upon convictions in traffic, misdemeanor, municipal ordinance, or conservation cases. We affirm the order denying defendant's motion to withdraw his guilty plea and vacate the electronic citation fee.

¶ 3 Defendant was charged with aggravated criminal sexual abuse for allegedly touching the vagina of a victim who was under 13 years of age with his hand for the purpose of his or her sexual gratification or arousal.

¶ 4 On January 9, 2012, the date that had been set for defendant's jury trial, his attorney informed the court that defendant had agreed to plead guilty:

"THE COURT: All right. Mr. Perez is before the court. The parties have reached an agreement?

DEFENSE COUNSEL: Judge, yes. The State's offer is the minimum, three years in the Illinois Department of Corrections, subject to your approval based on a plea of guilty to the aggravated criminal sexual abuse. The minimum is three and I believe Mr. Perez has agreed to plead guilty in exchange for the three years. He does have 566 days credit, so basically—it, as I instructed him, it's basically time considered served because the three years is actually 50%, and he basically has a year and six months in.

THE COURT: Okay. Mr. Perez, is that your understanding of the agreement between yourself, your attorney and the assistant State's Attorney?

DEFENDANT: Yes.

THE COURT: All right, sir, if you are not a citizen of the United States you are hereby advised a conviction for this offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization under the laws of the United States. Do you understand that, sir?

DEFENDANT: Yes.

THE COURT: Understanding that, do you still wish to proceed with this plea of guilty?

DEFENDANT: Uh-huh. Yeah."

¶ 5 The trial court proceeded to admonish defendant that he had been charged with aggravated, criminal sexual abuse, a Class 2 felony, and that the minimum term in the penitentiary is three years, while the maximum term is seven years. Part of his penitentiary sentence would include two years of MSR. The trial court asked defendant whether he understood. Defendant said no. The trial court then repeated the admonishment, again informing defendant of the possible three- to seven-year prison term with a two-year term of MSR. Defendant said he understood and that he wanted to plead guilty. The trial court informed defendant that by pleading guilty, he would be giving up his right to a jury trial and to a bench trial, his right to have the State prove him guilty beyond a reasonable doubt, his right to confront or cross-examine the State's witnesses, and his right to put on evidence in his own behalf, and to testify in his own behalf. Defendant said he understood. Defendant's attorney tendered a jury waiver to the court. The court questioned defendant as to whether the signature on the jury waiver was his, whether he understood that by signing the jury waiver, he was giving up his right to a jury trial, and whether the jury waiver had been explained to him in Spanish. Defendant responded affirmatively. The trial court accepted the jury waiver, finding it was made knowingly, intelligently and voluntarily.

¶ 6 The trial court questioned defendant whether he had been threatened or promised anything in an effort to get him to plead guilty. Defendant said no.

¶ 7 The State made a factual basis for the plea: On October 21, 2009, at approximately 3 a.m., defendant, who was 49-years-old, was in the basement apartment at 4900 West Oakdale Avenue in Chicago with Alma Aliprandi and her nine-year-old daughter and her nine-month-old baby girl. Ms. Aliprandi and her daughter went outside, leaving defendant alone with the baby. When Ms. Aliprandi returned "a couple moments later," she observed defendant "at the bed" with the baby. Defendant's hand was in the baby's diaper. Ms. Aliprandi and defendant began arguing, and defendant then locked himself in the bathroom, climbed out the bathroom window, and disappeared from the building. Defendant was apprehended on June 23, 2010, and gave a handwritten statement to a Spanish-speaking detective in which he admitted touching the baby in her diaper.

¶ 8 The parties stipulated to the facts presented by the State. The trial court accepted the plea, finding it was made freely and voluntarily and that a factual basis existed for the plea. The trial court sentenced defendant to the agreed-upon three years' imprisonment with two-years' MSR. Although not mentioned during the plea hearing, the trial court's written order also imposed \$2,125 in various fines and fees against defendant.

¶ 9 On January 30, 2012, defendant filed a *pro se* motion entitled "motions of ineffective assistance of counsel." In that motion, defendant stated he was innocent and not a pedophile, that Ms. Aliprandi had lied about seeing him with his hand in the baby's diaper in order to "run a criminal scheme," and that he had given his trial counsel copies of certain financial documents showing that while he was in prison, Ms. Aliprandi had forged his name on a check and withdrawn money from his checking account without his permission. Defendant argued that this financial evidence was exculpatory in that it showed that Ms. Aliprandi was someone who could not be trusted and that it showed her motive for lying, *i.e.*, that she wanted him in prison so she

could steal his money and stay rent-free in his apartment and use his car. Defendant also argued he had documentation that Ms. Aliprandi had a history of committing criminal actions against defendant, including assaulting him, and charging his credit cards online without his permission. Defendant complained that his trial counsel refused to show the court any of this exculpatory evidence (none of which is contained in the record on appeal), disregarded his claims of innocence, and refused to fight effectively on his behalf.

¶ 10 On March 27, 2012, the Assistant State's Attorney and trial counsel appeared in front of the court (without defendant present) and discussed his *pro se* motion. The trial court noted that someone had apparently written defendant's motion for him, that the motion did not explicitly request that his guilty plea be withdrawn, and that defendant was requesting that defense counsel be removed. The trial court determined that it needed to hear from defendant personally as to what he intended his motion to accomplish. The trial court ordered defendant to be written in for the next court date.

¶ 11 On April 27, 2012, trial counsel was present in court with defendant and informed the court that defendant wanted to withdraw his guilty plea. Trial counsel also stated that defendant was on parole but was being kept in custody "because he didn't have an address to parole to." The trial court told defendant that his motion to withdraw his guilty plea must be in writing and he granted defendant leave to file an amended motion.

¶ 12 On June 5, 2012, trial counsel informed the court that because defendant was making an ineffective assistance of counsel claim against her, another attorney should be appointed to represent defendant on the motion. On June 11, 2012, the trial court appointed new counsel to represent defendant on his motion.

¶ 13 On December 5, 2012, defendant's newly appointed counsel filed an amended motion to withdraw defendant's guilty plea, claiming that trial counsel was ineffective for wrongly informing him that his plea of guilty would result in his almost immediate release from prison, when in fact the residency restrictions imposed on him as a result of his conviction prevented him from supplying a residence that would allow him to be released on MSR. The motion also included defendant's affidavit, in which he stated he was innocent and that Ms. Aliprandi had falsely accused him "so that she could access [his] personal information and steal" from him. Defendant further attested that although he was innocent and had insisted on a jury trial, he pleaded guilty because his trial counsel told him that by doing so, he would not have to serve any further time in the Department of Corrections (IDOC) because he had already been in Cook County Jail for 18 months and he would receive "time considered served on [his] case." Despite his trial counsel's representation that he would not have to serve any further time in prison by pleading guilty, he remains in custody almost one year after entering his guilty plea. Defendant's affidavit makes no mention of the residency restrictions and gives no reason for why he remains in custody. Defendant attested that if his trial counsel had not told him he would be getting out of custody right away by pleading guilty, he would not have so pleaded and would have continued to insist on a jury trial.

¶ 14 The State filed a written response to defendant's amended motion to withdraw his guilty plea, arguing that defendant's plea was made knowingly and voluntarily and that trial counsel did not make any misrepresentations to defendant when she stated that his sentence under the guilty plea would basically amount to time considered served. The State noted that defendant was placed on parole the very next day after he pleaded guilty and, therefore, trial counsel's statement to defendant was correct. The State argued that it was not trial counsel's fault that defendant did

not provide an adequate address so as to be released from custody. Finally, the State argued that defendant's amended motion should be dismissed as untimely, because defendant did not file a written motion to withdraw his guilty plea within 30 days of the date on which the judgment was entered and the sentence was imposed.

¶ 15 On January 9, 2013, a hearing was held on defendant's amended motion to withdraw his guilty plea. Defendant testified that when he came to court a year earlier on January 9, 2012, he did not plan on pleading guilty to aggravated criminal sexual abuse and instead intended to assert his innocence. Defendant changed his mind and pleaded guilty because trial counsel told him (through a Spanish interpreter) of the State's offer that in exchange for a guilty plea, he would not be locked up anymore. Defendant further testified in pertinent part:

"Q. Did [trial counsel] say anything to you about needing an appropriate place to live or house based on your sex offense after you pled guilty?

A. No.

Q. Did you ever get released from custody?

A. No, never.

Q. Do you know the reason why you weren't released from custody?

A. There was a problem with my housing, so I didn't have a place to stay during that time."

¶ 16 On cross-examination, defendant testified:

"Q. And it is your testimony that [trial counsel] promised you that you would be going home?

A. Yes.

Q. And that she never talked to you about you needing a place to live when you got out of prison?

A. No.

Q. And you never talked to her about places you could live when you got out of prison?

A. No."

¶ 17 Defendant's trial counsel testified that while representing defendant, the State offered him three years' imprisonment in exchange for a guilty plea. Through the aid of a Spanish interpreter, trial counsel informed defendant of the State's offer. Trial counsel further testified:

"Q. When you explained the offer to Mr. Perez, did you ever tell Mr. Perez that *** the day that he pled guilty, he would get out of prison that day?

A. No, I never tell my clients any such thing. *** I [said] [w]hen you go down to IDOC, they will calculate; but you don't have much time left. ***

Q. Now *** because the defendant was pleading to a sex case *** did you speak to him about anything *** he would need to do when he was released from prison?

A. Yes. I have been a Public Defender for quite some time, and I am well-aware that when you plead guilty to a sex case, once you finish serving your time, if you do not have an address so to speak to be released to, the Department of Corrections has the option of having you remain in custody for your parole time. So I did tell him that he would need to have an address. He would need to register. The judge admonished him during the plea regarding his immigration status. And during the case, in preparation, I did speak to some family members who live here in Chicago of Mr. Perez's. So I did tell him that he would need to have an address to be released to.

* * *

Q. When you informed Mr. Perez about the fact that he would need a place to register to when he is released from prison on parole, did he tell you if he had any places he could move to?

A. Well, he did inform me that he has family in Chicago. He didn't give me a specific address, but I know he has an uncle. ***

Q. When you mentioned the fact that he would need a fixed address, did he ever say that that would be a problem or he could not provide one after you informed him of that necessity?

A. No, he did not. No, he did not."

¶ 18 On cross-examination, trial counsel testified:

"Q. And you never told him, did you, that he would have to go to a specialized address. You just said he needed to have a fixed address; correct?

A. Yes. I don't know what a specialized address is."

¶ 19 Following the testimony, the trial court found trial counsel's testimony to be "highly credible" and defendant's testimony to be incredible. The trial court noted that in addition to considering the testimony at the hearing, it also reviewed the transcript of the plea. The trial court denied defendant's amended motion to withdraw his guilty plea, finding that defendant's guilty plea was knowingly and voluntarily given where defendant indicated he understood every step of the plea process and stated that no one had made any threats or promises to him in exchange for his plea of guilty. The trial court noted defendant had 566 days in custody, which was enough credit to satisfy his three-year sentence. The trial court further noted that trial counsel had asked defendant if he had a place to stay upon his release, and he told her yes, that

some of his family members indicated they could provide him with a place to stay. The trial court then stated, :I don't know what happened. I don't know if the family members' homes were not appropriate or the family rejected taking him in, someone who had been convicted of such a heinous crime. I don't know what happened, but the fact of the matter is, it is not [trial counsel's] responsibility to find him a place to stay when it is time for him to be paroled." The trial court concluded: "What it amounts to is buyer's remorse because *** he does, in fact, have some immigration issues, which he was admonished about and told that pleading guilty to this case would affect those issues." Defendant now brings this appeal.

¶ 20 Initially, the State contends we should dismiss defendant's appeal because he did not file a written motion to withdraw his guilty plea within 30 days of the date on which the judgment was entered and the sentence was imposed. See Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013) (providing that no appeal from a judgment entered on a guilty plea shall be taken unless defendant files a motion to withdraw the guilty plea and vacate the judgment within 30 days of the date on which sentence is imposed).

¶ 21 We disagree with the State's argument and find that appellate jurisdiction is not lacking. A defendant's *pro se* post-plea filings must be liberally construed. *People v. Barnes*, 291 Ill. App. 3d 545, 551 (1997). As long as defendant files a written pleading manifesting a desire to seek relief from judgment entered on a guilty plea within 30 days of the date on which sentence is imposed, the court must consider it a motion to withdraw the guilty plea and inquire whether defendant is represented by counsel or is indigent and desires counsel. *Id.* at 550-51.

¶ 22 In the present case, the record shows that within 30 days of the date on which sentence was imposed on his guilty plea, defendant filed a *pro se* motion entitled "motions of ineffective assistance of counsel" in which he asserted his innocence and argued that his trial counsel had

disregarded the allegedly exculpatory evidence that would show he did not commit the crime charged. Liberally construed, defendant's *pro se* motion manifested a desire to seek relief from his plea of guilty and resulting imprisonment and, thus, was a motion to withdraw the guilty plea. Any doubt was removed when the trial court ordered defendant to be writted in for the next court date, at which trial counsel was present in court with defendant and specifically informed the court that defendant had intended by his motion to withdraw his guilty plea. The trial court granted defendant leave to file an amended motion to withdraw his plea of guilty, and later appointed new counsel to argue the motion. As defendant's *pro se* motion, liberally construed as a motion to withdraw his guilty plea, was timely filed within 30 days of the date on which sentence was imposed, we possess jurisdiction to consider defendant's appeal.

¶ 23 On appeal, defendant contends his guilty plea was not made knowingly and voluntarily due to his trial counsel's ineffective assistance and, therefore, that he should have been allowed to withdraw his guilty plea. See *People v. Presley*, 2012 IL App (2d) 100617, ¶ 23 (a plea is valid only if it is knowing and voluntary). "Ordinarily, the decision whether or not to allow a defendant to withdraw his guilty plea is a matter within the discretion of the trial court and will not be disturbed absent an abuse of that discretion." *People v. Manning*, 227 Ill. 2d 403, 411-12 (2008). Where a defendant pleads guilty based on the ineffective assistance of counsel, the plea is not knowingly and voluntarily made and defendant should be allowed to withdraw the plea. *Id.* at 412.

¶ 24 Defendant contends he pleaded guilty only after his trial counsel ineffectively misled him into believing that he would immediately be released from custody upon showing proof of his place of residence, and did not inform him that his conviction of aggravated criminal sexual abuse placed numerous restrictions on where he could reside. Specifically, as a result of his

conviction, defendant was prohibited by law from knowingly residing within 500 feet of any school building or the real property comprising any school that persons under the age of 18 attend. 720 ILCS 5/11-9.3(b-5) (West 2012). Defendant was also prohibited from knowingly residing within 500 feet of any playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age. 720 ILCS 5/11-9.3(b-10) (West 2012). Defendant argues on appeal that his inability to supply a residence that satisfied those restrictions rendered him ineligible (under IDOC guidelines) to be released on MSR and that, had he known about those residency restrictions, he would not have pleaded guilty but instead would have insisted on going to trial.

¶ 25 The standard for determining whether a defendant was denied the effective assistance of counsel in entering a guilty plea is the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Hall*, 217 Ill. 2d 324, 334-35 (2005). To establish ineffective assistance of counsel under *Strickland*, defendant must show: (1) his counsel's representation fell below an objective standard of reasonableness; and (2) that defendant was prejudiced thereby, meaning there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88, 694.

¶ 26 We may dispose of an ineffective assistance of counsel claim by proceeding directly to the prejudice prong without addressing counsel's performance. *People v. Hale*, 2013 IL 113140,

¶ 17. With respect to the prejudice prong of an ineffective assistance of counsel claim relating to a plea agreement, our supreme court has held that defendant must show a reasonable probability that, absent counsel's errors, he would have pleaded not guilty and insisted on going to trial.

People v. Hall, 217 Ill. 2d 324, 335 (2005). Citing *Hill v. Lockhart*, 474 U.S. 52 (1985), the *Hall* court further held that "the question of whether counsel's deficient representation caused the defendant to plead guilty depends in large part on predicting whether the defendant likely would have been successful at trial." *Hall*, 217 Ill. 2d at 336.

¶ 27 The State contends that in the present case, defendant likely would not have been successful at trial and, therefore, his claim of ineffective assistance fails under *Hall* and *Lockhart*.

¶ 28 We need not address the State's argument regarding the strength of its case against defendant, because under the unique facts of this case, we may dispose of defendant's ineffective assistance claim without reaching the issue of whether defendant would have been successful at trial. In support, we note that in *Lockhart*, which was cited in *Hall*, the United States Supreme Court held in pertinent part:

"In many guilty plea cases, the 'prejudice' inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial. For example, where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error 'prejudiced' the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial. Similarly, where the alleged error of counsel is a failure to advise the defendant of a potential affirmative defense to the crime charged, the resolution of the 'prejudice' inquiry will depend largely on whether the affirmative defense likely would have succeeded at

trial. [Citation.] As we explained in *Strickland v. Washington* *** these predictions of the outcome at a possible trial, *where necessary*, should be made objectively, without regard for the 'idiosyncrasies of the particular decisionmaker.' [Citation.]" (Emphasis added.) *Lockhart*, 474 U.S. at 59-60.

¶ 29 Thus, in *Lockhart*, the United States Supreme Court made clear that predictions of the outcome at a possible trial are not required in *all* cases involving ineffective assistance challenges to convictions obtained through a guilty plea, but are only required "where necessary," *i.e.*, where defendant pleaded guilty based on counsel's errors (such as failing to discover exculpatory evidence or to advise defendant of a potential affirmative defense) that misled defendant into believing that the State's case against him was stronger than it actually was.

¶ 30 In the present case, defendant makes no argument that his guilty plea was made because trial counsel misled him about the strength of the State's case; rather, defendant argues on appeal that he pleaded guilty because counsel failed to inform him of the residency restrictions resulting from his conviction for aggravated criminal sexual abuse and misled him into believing he would be immediately freed, and that if he had known of those restrictions preventing his release from prison, he would have pleaded not guilty and insisted on going to trial. Accordingly, in analyzing whether defendant was prejudiced into pleading guilty by his counsel's ineffective assistance, our focus is not on the strength of the State's case (for which no argument is made that it had anything to do with defendant's decision to plead guilty) but, rather, on defendant's argument that his guilty plea was made due to counsel's failure to adequately inform him of the residency restrictions resulting from his conviction.

¶ 31 In analyzing defendant's argument, we note that the record on appeal is not at all clear that defendant's knowledge of the residency restrictions resulting from his conviction would have caused him to plead not guilty. At the hearing on defendant's amended motion to withdraw his guilty plea, defendant testified that the reason he was not released from custody during his MSR term was because "[t]here was a problem with [his] housing, so [he] didn't have a place to stay during that time." There were no follow-up questions regarding the type of housing "problem" defendant had experienced, and defendant never stated that the "problem" was that his proposed housing failed to meet the residency restrictions resulting from his conviction; thus, we are left to speculate as to the type of housing problem defendant experienced that prevented IDOC from releasing him from custody during his MSR term. On the one hand, it is *plausible* that the problem defendant experienced with his housing was that it failed to meet the residency restrictions resulting from his conviction, causing IDOC to refuse to release him; however, it seems just as plausible (given the incomplete record) that his proposed housing met the residency restrictions but that his living arrangement fell through after his guilty plea and, therefore, he was unable to provide IDOC with a fixed address required for his release. Under this second scenario, trial counsel's failure to inform defendant of the residency restrictions did not prejudice him because he found a residence satisfying those restrictions and would have pleaded guilty anyway, and it was only *after* the guilty plea that the living arrangement fell through and defendant regretted the decision not to go to trial. Given the incompleteness of the record regarding why defendant's housing arrangement failed to meet IDOC's guidelines, and given the possibility under this incomplete record that defendant would have pleaded guilty even if he had been told of the residency restrictions resulting from his conviction, we cannot say that defendant has met his burden of showing a reasonable probability that, but for counsel's allegedly

unprofessional errors, the result of the proceeding would have been different. Accordingly, defendant's ineffective assistance of counsel claim fails for lack of prejudice.

¶ 32 Defendant next contends his trial counsel provided ineffective assistance by failing to advise him of the risk that accepting the State's plea offer would almost certainly lead to his deportation, and that if he had been so advised, he never would have pleaded guilty. Defendant further contends his appointed post-plea counsel was ineffective for failing to raise this issue in his amended motion to withdraw his guilty plea.

¶ 33 In support, defendant cites *Padilla v. Kentucky*, 559 U.S. 356 (2010), in which the United States Supreme Court held that an attorney's duties under *Strickland* include informing a non-citizen client defendant of whether a plea of guilty carries the risk of deportation.

In the present case, defendant's guilty plea carried a risk of deportation about which his counsel should have warned him. Specifically, defendant was charged with aggravated criminal sexual abuse for knowingly committing an act of sexual conduct upon a victim who was under the age of 13 when the act was committed, particularly, for touching the victim's vagina with his hand for the purposes of his or her sexual gratification or arousal. The relevant immigration statute provides that the classification of aliens who are deportable includes "[a]ny alien who is convicted of an aggravated felony at any time after admission." 8 U.S.C. § 1227(a)(2)(iii). The term "aggravated felony" is defined as including "sexual abuse of a minor." 8 U.S.C. § 1101(a)(43)(A). As such, pleading guilty to sexually abusing a minor made defendant deportable (and, in fact, he was subsequently deported).

¶ 34 Although trial counsel did not inform defendant of the risk of deportation involved with his guilty plea, we find no prejudice and, thus, no ineffective assistance of counsel, because the

trial court adequately informed defendant of the deportation risk prior to accepting his guilty plea. Specifically, at the plea hearing, the trial court informed defendant:

"All right, sir, if you are not a citizen of the United States you are hereby advised a conviction for this offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States or denial of naturalization under the laws of the United States. Do you understand that, sir?"¹

Defendant responded: "Yes."

¶ 35 The trial court's admonition to defendant adequately apprised defendant of his deportation risk in pleading guilty, and the court made sure defendant understood the risk. As such, defendant was not prejudiced by his counsel's failure to also inform him of the risk. Accordingly, defendant's claim of ineffective assistance fails.

¶ 36 Defendant contends *People v. Guzman-Ruiz*, 2014 IL App (3d) 120150, compels a different result. Guzman-Ruiz pleaded guilty to unlawful possession with intent to deliver more than 2,000 grams but not more than 5,000 grams of cannabis. *Id.* ¶ 3. On appeal, Guzman-Ruiz argued her counsel was ineffective for failing to inform her she would be deported following the guilty plea. *Id.* ¶ 14. The relevant immigration statute provided:

"Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance *** other than a single offense

¹ The trial court's admonishment was made in accordance with section 113-8 of the Code of Criminal Procedure of 1963 (Criminal Code), which states: "Before the acceptance of a plea of guilty *** the court shall give the following advisement to the defendant in open court: 'If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States.' " 725 ILCS 5/113-8 (West 2012).

involving possession for one's own use of 30 grams or less of marijuana, is deportable."

8 U.S.C. §1227 (a)(2)(B)(i) (2006).

The appellate court held that counsel's representation fell below an objective standard of reasonableness when he failed to accurately inform Guzman-Ruiz that if she accepted the plea agreement, deportation would be imminent. *Id.* ¶ 20. The appellate court acknowledged that in some cases, a trial court's subsequent admonishments may counterbalance and correct the deficient legal advice provided by defense counsel. *Id.* ¶ 22. The appellate court proceeded to examine the trial court's admonishments which consisted, in relevant part, of the following statements: " 'They haven't placed a hold on you. They haven't arrested you for ICE so chances are, if they haven't already, they're not going to. *** But, technically, obviously they can always pick you up and deport you solely on the basis of this conviction because you were not a naturalized citizen.' " *Id.* at ¶ 22. The appellate court held that "the trial court's admonishments did not overcome the ineffective assistance of defense counsel since the court minimized any concerns about the risk of deportation and, by doing so, reinforced counsel's deficient advice." *Id.*

¶ 37 By contrast, in the present case, the trial court's admonishment did not minimize any concerns about the risk of deportation, but rather informed defendant that his plea of guilty carried the risk of deportation, exclusion from the United States, or denial of naturalization. The trial court's admonition to defendant mirrored the admonition required to be given to defendant under section 113-8 of the Criminal Code. As such, we find that the trial court adequately apprised defendant of the deportation risks attendant to his guilty plea and, consequently, that defendant was not prejudiced by trial counsel's failure to warn him of the same risks. As

defendant has failed to establish prejudice by his trial counsel's allegedly deficient representation, his claim of ineffective assistance is without merit.

¶ 38 Defendant contends that his post-plea counsel was ineffective for failing to argue in his amended motion to withdraw the guilty plea that trial counsel was ineffective for failing to properly inform defendant of the deportation consequences of his guilty plea. However, as discussed, defendant suffered no prejudice and, thus, trial counsel committed no ineffective assistance, where defendant was properly informed of the deportation consequences of the plea by the trial court. As defendant's contention of ineffective assistance of trial counsel was without merit, post-plea counsel's decision not to raise the issue in the amended motion to withdraw the guilty plea was objectively reasonable. Accordingly, defendant's contention of ineffective assistance of post-plea counsel fails.

¶ 39 Next, defendant contends the trial court never admonished him under Rule 402(a) (Ill. S. Ct. R. 402(a) (eff. July 1, 2012)), that he would have to pay certain fines as a direct consequence of pleading guilty and, therefore, that he did not receive the benefit of the sentence he bargained for and should be allowed to withdraw his guilty plea.

¶ 40 Due process requires that defendant be advised of the direct consequences of a guilty plea. *People v. Hughes*, 2012 IL 112817, ¶ 35. A direct consequence of a guilty plea is one that has a definite, immediate and largely automatic effect on the range of a defendant's sentence. *Id.* To that end, Rule 402 provides, in pertinent part, that the trial court must advise the defendant of the minimum and maximum penalties applicable to the charged offense, and must question defendant personally in open court to confirm the terms of the plea agreement prior to accepting defendant's plea. Ill. S. Ct. R. 402(a), (b) (eff. July 1, 2012). Substantial compliance with Rule 402 is sufficient to establish due process. *People v. Fuller*, 205 Ill. 2d 308, 323 (2002).

¶ 41 Defendant contends the trial court failed to substantially comply with Rule 402 when it never admonished him that his sentence would include fines imposed on him as a direct consequence of his guilty plea. Defendant's contention is without merit. Our supreme court has held that substantial compliance with Rule 402 does not require that defendant be admonished of any fines². *People v. Krantz*, 58 Ill. 2d 187, 195 (1974).

¶ 42 Finally, defendant contends the trial court erred in assessing him a \$5 electronic citation fee, as such a fee is only authorized in "traffic, misdemeanor, municipal ordinance or conservation case[s]". 705 ILCS 105/27.3e (West 2012). The State agrees. Accordingly, we vacate the \$5 electronic citation fee.

¶ 43 For the foregoing reasons, we affirm the denial of defendant's amended motion to withdraw his guilty plea. We vacate the \$5 electronic citation fee. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 44 Affirmed in part and vacated in part.

² In his appellant's brief, defendant contends the trial court also erred by failing to admonish him that his sentence would include certain fees. Fees are considered collateral (not direct) consequences of the guilty plea (*People v. Rogers*, 2014 IL App (4th) 121088, ¶ 35) and, thus, the trial court had no duty to admonish defendant about them. See *Hughes*, 2012 IL 112817, ¶ 36 (holding that a defendant need not be advised by the trial court of the collateral consequences of a guilty plea). In his reply brief, defendant abandons his argument that the trial court had the duty to admonish him about the fees.